

PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

6. JUDICIAL NOTICE

The Federal Rules of Evidence provide that a judicially noted fact must be one that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. See Fed. R. Evid. 201(b). The administrative law judge may therefore take administrative judicial notice of facts if it is done in the proper manner. In so doing, the administrative law judge must provide the parties with "the opportunity to contradict the noticed facts" with evidence to the contrary. *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Jordan v. James G. Davis Construction Corp.*, 9 BRBS 528.9, 530 (1978).

CASE LISTINGS

[Board has taken judicial notice of fact that physician is listed in Directory of Medical Specialist as board certified radiologist] *Boyd v. Freeman United Coal Mining Co.*, 6 BLR 1-159 (1983).

[Sixth Circuit took judicial notice of that Board certified radiologist is at least as qualified to read x-rays as A reader] *Hatfield v. Secretary of Health and Human Services*, 743 F.2d 1150, 7 BLR 2-1 (6th Cir. 1984); see also *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

[Board rejected contention that fact-finder improperly took judicial notice that Social Security Administration records were not as reliable in early stages of the plan as in the present] *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985).

DIGESTS

The administrative law judge may take judicial notice of information concerning the

physical nature of jobs listed in the Dictionary of Occupational Titles if he does so in accord with the established principles for the taking of judicial notice. **Onderko v. Director, OWCP**, 14 BLR 1-2 (1989); see generally 29 C.F.R. §18.45; 20 C.F.R. §725.464; Fed. R. Evid. 201; cf. **Snorton v. Zeigler Coal Co.**, 9 BLR 1-106, 1-108 (1986).

The Board held that an administrative law judge may take judicial notice of a fact if substantial prejudice will not result and the parties are given an adequate opportunity to show the contrary. **Maddaleni v. The Pittsburg & Midway Coal Mining Co.**, 14 BLR 1-135 (1990); see **Onderko v. Director, OWCP**, 14 BLR 1-2 (1989); **Simpson v. Director, OWCP**, 9 BLR 1-99 (1986); **Roberts v. Bethlehem Mines Corp.**, 8 BLR 1-211 (1985); **Calfee v. Director, OWCP**, 8 BLR 1-7 (1988); **Pruitt v. Amax Coal Co.**, 7 BLR 1-544 (1984); **Casias v. Director, OWCP**, 2 BLR 1-259 (1975); **Jordan v. James G. Davis Construction Corp.**, 9 BRBS 528 (1978).

5/95